

**By Circulation
Court No. 1**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**Review Application No. 21 of 2019
(Inre O.A. No. 393 of 2018)**

Tuesday, the 02nd day of April, 2019

**Hon'ble Mr. Justice S.V.S.Rathore, Member (J)
Hon'ble Air Marshal B.B.P. Sinha, Member (A)**

No.14288871-A Ex. Hony. Naib Subedar Ram Poot Dixit, S/o Late Bhagwati Prasad Dixit, Resident of Village – Bhogipur Mani, Post – Maksudpur, Tehsil – Mohamadi, District – Lakhimpur (UP) presently residing at House No.537-B/25/134, Amber Vihar Colony, Faizullaganj, Lucknow PIN-226020 (U.P.)

..... **Review Applicant**

Ld. Counsel for the Applicant – **Shri Sudhir Kumar Singh,
Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of Army Staff, Sena Bhawan, New Delhi, PIN-110011.
3. Senior Record Officer, Signal Records, Jabalpur (M.P.), PIN-482001.
4. Principal Controller of Defence Accounts (PCDA), Pension, G3 (RA Section), Draupadi Ghat, Allahabad-14.

..... **Respondents**

Ld. Counsel for the Respondents – **Shri Adesh Kumar Gupta,
Central Govt. Counsel.**

ORDER

1. The applicant has filed this Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008. By means of this Review Application, the applicant has made prayer to review the order dated 18.02.2019 and set aside the same and Original Application be allowed with all consequential benefits with cost.

2. The matter came up before us by way of Circulation as per provisions of Rule 18 (3) of the Armed Forces Tribunal (Procedure) Rules, 2008, whereby the applicant has prayed for review of the order dated 18.02.2019 passed in O.A No. 393 of 2018. In the aforesaid O.A., following order was passed:-

*“13. Thus, in the result, the Original Application No.393 of 2018 is **partly allowed**. Based on the Government letter dated 12.06.2009, the applicant was entitled to the pension of Hony Naib Subedar w.e.f. 01.01.2006 but the applicant has approached this Tribunal with long delay so the arrears of pension of Hony Naib Subedar shall be restricted w.e.f. three years prior to the date of filing of this Original Application. The respondents are directed to release the enhanced/revised service pension to the applicant in the rank of Hony Naib Subedar w.e.f. three years prior to the date of filing of this Original Application. The date of filing of this Original Application is 19.03.2018. The respondents are also directed to comply with the order within four months from the date of receipt of the certified copy of the order, further making it clear that no interest shall be admissible and payable to the applicant in this regard. In case, the respondents fail to comply with the order within the*

stipulated period, the amount payable shall start earning interest @ 9% per annum from the date of order.”

3. In this case, the applicant was discharged from service on 01.03.1996 on completion of terms and conditions in the Army in the rank of Havildar. He was bestowed honorary rank of Naib Subedar on 15.08.1996. The grouse of the applicant was that though he was sanctioned service pension of the rank of Havildar, he was not paid the pension and pensionary benefits associated with the post of Naib Subedar as per the recommendations made by the 6th Pay Central Pay Commission. Accordingly, the Original Application was partly allowed, but, since the applicant has approached this Tribunal with long delay so the arrears of pension of Hony. Naib Subdar was restricted with effect from three years prior to the date of filing of the said Original Application. .

4. It is settled proposition of law that the scope of the review is limited and the applicant has to show that there is error apparent on the face of the record. For ready reference the Order 47 Rule 1 Sub Rule (1) of the Code of Civil Procedure is reproduced below :-

“1. Application for review of judgment.- (1) any person considering himself aggrieved---

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record , or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may

apply for a review of judgment of the Court which passed the decree or made the order.”

5. It is well settled proposition of law that the scope of review jurisdiction is very limited and re-hearing in the garb of review is not permissible. Hon'ble the Supreme Court in Para 9 of its judgment in the case of **Parsion Devi and Others vs. Sumitri Devi and others** reported in (1997) 8 Supreme Court Cases 715, has observed as under :-

“9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise.”

6. It is pertinent to mention that applicant was discharged on 01.03.1996 and he approached this Tribunal on 19.03.2018. Based on the Government letter dated 12.06.2009, the applicant was entitled to the pension of Hony Naib Subedar w.e.f. 01.01.2006, but, the applicant has approached this Tribunal with long delay, hence, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass Vs. Union of India**, reported in 2007 (3) SLR 445, the arrears

of pension of Hony. Naib Subedar was restricted w.e.f. three years prior to the date of filing of the said Original Application.

7. The judgment and order sought to be reviewed has been passed in proper prospective after considering all the facts and circumstances of the case. No error apparent on the face of record has been shown so as to review the aforesaid judgment of this Court. In view of the principle of law laid down by Hon'ble the Apex Court in the case of **Parsion Devi and Others vs. Sumitri Devi and others** (supra), we are of the considered view that there is no error apparent on the face of record in the impugned order dated 18.02.2019, which may be corrected in exercise of review jurisdiction.

8. Accordingly, the Review Application No. 21 of 2019 is **rejected**. There shall be no order as to costs. The Applicant may be informed accordingly.

(Air Marshal B.B.P. Sinha)
Member (A)

(Justice S.V.S.Rathore)
Member (J)

Dated : 02nd April, 2019

AKD/UKT/-